

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HAROLD E. BENCOMA,

Plaintiff,

v.

NEVADA DEPARTMENT OF
CORRECTIONS et al.,

Defendants.

2:16-cv-00328-GMN-NJK

ORDER

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On August 10, 2016, this Court issued an order dismissing the amended complaint with leave to amend and directed Plaintiff to file a second amended complaint within thirty days. (ECF No. 12 at 5). The thirty-day period has now expired, and Plaintiff has not filed a second amended complaint or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for

1 failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)
2 (dismissal for lack of prosecution and failure to comply with local rules).

3 In determining whether to dismiss an action for lack of prosecution, failure to obey a
4 court order, or failure to comply with local rules, the court must consider several factors: (1)
5 the public's interest in expeditious resolution of litigation; (2) the court's need to manage its
6 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
7 cases on their merits; and (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d
8 at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-
9 61; *Ghazali*, 46 F.3d at 53.

10 In the instant case, the Court finds that the first two factors, the public's interest in
11 expeditiously resolving this litigation and the Court's interest in managing the docket, weigh
12 in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
13 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in
14 filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
15 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy favoring disposition of cases
16 on their merits – is greatly outweighed by the factors in favor of dismissal discussed herein.
17 Finally, a court's warning to a party that his failure to obey the court's order will result in
18 dismissal satisfies the "consideration of alternatives" requirement. *Ferdik*, 963 F.2d at 1262;
19 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court's order requiring
20 Plaintiff to file a second amended complaint within thirty days expressly stated: "If Plaintiff
21 chooses not to file a second amended complaint curing the stated deficiencies, the Court shall
22 dismiss this action without prejudice." (ECF No. 12 at 5). Thus, Plaintiff had adequate warning
23 that dismissal would result from his noncompliance with the Court's order to file a second
24 amended complaint within thirty days.

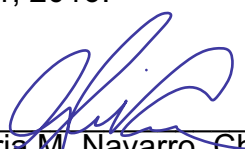
25 It is therefore ordered that this action is dismissed without prejudice based on Plaintiff's
26 failure to file a second amended complaint in compliance with this Court's August 10, 2016,
27 order.

28 It is further ordered that the motion to proceed *in forma pauperis* (ECF No. 5) is denied

1 as moot.

2 It is further ordered that the Clerk of Court shall enter judgment accordingly.

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4 DATED: This 20 day of September, 2016.

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8 Gloria M. Navarro, Chief Judge
9 United States District Court
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